

November 30, 2017

To Whom It May Concern:

Enclosed please find an Addendum to Petition for Waiver in the Matter of Request for Review by Jefferson County Public School District R-1 of Decision of Universal Service Administrator filed November 14, 2017. This Addendum was prepared and filed by Caplan and Earnest LLC on behalf of the District (CC Docket No. 02-6).

Should you have any questions, please do not hesitate to contact me at 303-443-8010 or ehood@celaw.com, or the District's contact person, Brett Miller, Chief Information Office, Jefferson County Public Schools, at 303-982-2265 or brett.miller@jeffco.k12.co.us.

Sincerely,

CAPLAN AND EARNEST LLC



Elliott V. Hood

EVH/mjj
Attachments

4852-0255-0103, v. 1

November 30, 2017

ADDENDUM
TO PETITION FOR WAIVER FILED NOV. 14, 2017

VIA ELECTRONIC DELIVERY

CC Docket No. 02-6

Federal Communications Commission
445 12th Street SW, Washington, D.C. 20554
Phone: 1-888-835-5322
Fax: 1-866-418-0232

IN THE MATTER OF REQUEST FOR REVIEW BY JEFFERSON COUNTY PUBLIC
SCHOOL DISTRICT R-1 OF DECISION OF UNIVERSAL SERVICE
ADMINISTRATOR

Billed Entity: Jefferson County Public School District R-1

Billed Entity No.: 143710

Contact: Brett Miller, Chief Information Officer
Jefferson County Public Schools
1829 Denver West Drive, Building 27
Golden, Colorado 80401
Phone: 303-982-2265
Email: brett.miller@jeffco.k12.co.us

Notification from USAC	Funding Year	471 Number	FRN	Amount Denied	Amount to be Recovered
Sept. 15, 2017	2017-18	171041291	1799102606	\$987,162.12	
Nov. 3, 2017	2015-16	1045903	2854178		\$991,575.36
Nov. 20, 2017	2016-17	161036005	1699076015		\$440,700.96
<i>Not Yet Received</i>	2016-17	161036005	<i>Not Yet Requested</i>		\$547,914.42
TOTALS				\$987,162.12	\$1,980,190.74
GRAND TOTAL				\$2,967,352.86	

On November 14, 2017, Jefferson County Public School District R-1 (the “District”) petitioned the Federal Communications Commission (the “Commission”) under 47 C.F.R. § 1.3 to waive its E-Rate competitive-bidding rules, namely 47 C.F.R. §§ 54.503(c)(2)(ii)(B) and 54.511(a), and accordingly reverse the Universal Service Administration Company’s (“USAC”) decision to deny or rescind from the District funding for increased bandwidth capacity.

The confirmation number for that petition filing is 2017111430089241.

The District’s position is that the Commission should waive these rules because the District ultimately selected the most cost-effective bid—by a magnitude of over \$6 million—and denying these funds would cause substantial hardship to the District and its students.

In its petition, the District noted that USAC has denied or rescinded (or will likely deny) \$2,967,352.86 in E-Rate funds to the District arising from the same bidding process and resulting three-year contract with its service provider (CenturyLink). (*See* 11/14/17 Petition at 7-8.) Thus, for efficiency and in the interest of judicial economy, the District requested in its petition that the Commission waive its competitive-bidding rules for that bidding process and all the resulting denials or rescissions connected with that bidding process. (*See id.*) These denials and rescissions are listed on the first page of the petition and this addendum.

The District also noted in its petition that it expected, but had not yet received, a notification from USAC that it would seek rescission of \$440,700.96 in E-Rate funding it awarded to the District for the 2016-2017 funding year (471 No. 161036005, FRN 1699076015). The District has now received that notification (dated Nov. 20, 2017), which is attached as Exhibit A to this addendum.¹

The District respectfully requests that the Commission accept this addendum (with exhibit) to the petition filed on November 14, 2017 (confirmation no. 2017111430089241).

Further, in lieu of filing a separate waiver request concerning the attached rescission notification (dated Nov. 20, 2017), the District respectfully requests that the Commission deem this addendum (with exhibit) as a request for waiver of Commission rules 47 C.F.R. §§ 54.503(c)(2)(ii)(B) and 54.511(a) concerning that notification. (*See* Ex. A at 1.)

Sincerely,

/s/ *Brett Miller*

Brett Miller
Chief Information Office

¹ This notification is **highlighted** on the table on page 1 of the addendum. The version of this table included with the petition (filed November 14, 2017) stated that the notification was “*not yet received*.”



Commitment Adjustment Letter

Dan McMinimee
Jefferson County School District R-1
1829 Denver West Drive, Building 27
Golden, CO 80401

11/20/2017

Our review of your Schools and Libraries Universal Service Support Program (or E-rate) funding request has determined funds were committed in violation of Federal Communications Commission (FCC) rules. You have 60 days from the date of this letter to appeal the following decision(s). For more detailed information see below.

Total commitment adjustment: \$988,615.38

Total amount to be recovered: \$440,700.96

FCC Form 471	FRN	Commitment adjustment	Total amount to be recovered	Explanation(s)	Party to recover from
161036005	1699076015	\$988,615.38	\$440,700.96	Price not primary factor for vendor selection	BEN

See Attached Adjustment Report for more information on the specific FRNs and Explanations listed above.

Commitment Adjustment

FCC rules require the Universal Service Administrative Company (USAC) to rescind commitments and recover funding when it is determined that funding was committed and disbursed in violation of the rules. This letter notifies you that USAC will be adjusting your funding commitment(s) and provides information on how to appeal this decision.

This is NOT a bill. If disbursed funds need to be recovered, USAC will issue a Demand Payment Letter. The debt referenced in the Demand Payment Letter will be due within 30 days of that letter's date. Failure to pay the debt may result in interest, late payment fees, and administrative charges and will invoke the FCC's "Red Light Rule."

FCC's Red Light Rule

The FCC Red Light Rule requires USAC to dismiss pending FCC Form 471 applications, appeals, and invoices or to net disbursements offsetting the debt if the entity responsible for paying the outstanding debt owed to the FCC has not paid the debt or made satisfactory arrangements to pay the debt within 30 days of the Demand Payment Letter. For information on the Red Light Rule, see

<https://www.fcc.gov/licensing-databases/fees/debt-collection-improvement-act-implementation>.

To Appeal This Decision

If you wish to contest any part of this letter, you must first file an appeal with USAC to seek review of the decision. Parties that have filed an appeal with USAC and received an adverse decision may, if they choose, appeal USAC's decision to the FCC. Parties seeking a waiver of a codified FCC rule should file a request for waiver directly with the FCC because USAC cannot waive FCC rules. Your appeal to USAC or waiver request to the FCC must be filed within 60 days of the date of this letter.



All appeals filed with USAC must be filed in EPC by selecting "Appeal" from the menu in the top right hand corner of your landing page and providing the requested information.

Your appeal should include the following information. (Because you file the appeal through your EPC account, the system will automatically fill in some of these components for you).

- 1) Name, address, telephone number, and email address for the contact person for this appeal.
- 2) Indicate specifically that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., Commitment Adjustment Letter) and the decision you are appealing:
 - a. Appellant name;
 - b. Applicant name and service provider name, if different from appellant;
 - c. Applicant BEN and Service Provider Identification Number (SPIN);
 - d. FCC Form 471 Application Number and the Funding Request Number (FRN) or Numbers as assigned by USAC;
 - e. "Commitment Adjustment Letter," AND the exact text or the decision that you are appealing.
- 3) Identify the problem and the reason for the appeal and explain precisely the relief sought. Please keep your appeal to the point, and provide supporting documentation. Be sure to keep a copy of your entire appeal, including any correspondence and documentation. A copy will automatically be saved for you in EPC. USAC will reply to your appeal submission to confirm receipt.

For more information on submitting an appeal to USAC including step by step instructions on how to file the appeal through EPC, please see "Appeals" in the Schools and Libraries section of the USAC website.

As mentioned, parties seeking a waiver of FCC rules or that have filed an appeal with USAC and received a decision may file a request for waiver or appeal USAC's decision to the FCC. Waiver requests or appeals to the FCC must be made within 60 days of the issuance of USAC's decision and include all of the information referenced above for appeals to USAC.

The FCC recommends filing appeals or waiver requests with the Electronic Comment Filing System (ECFS) to ensure timely filing. Electronic waiver requests or appeals will be considered filed on a business day if they are received at any time before 11:59 PM ET. If you have questions or comments about using the ECFS, please contact the FCC directly at (202) 418-0193.

For more information about submitting waiver requests or appeals to the FCC, including options to submit the waiver request or appeal via U.S. mail or hand delivery, visit the FCC's website.

Schools and Libraries Division



Adjustment Report

FCC Form 471 Application Number:	161036005
Funding Request Number:	1699076015
Commitment Adjustment:	\$988,615.38
Total Amount to Be Recovered:	\$440,700.96
Explanation(s):	Price not primary factor for vendor selection
Party to Recover From:	BEN
Funding Year:	2016
Billed Entity Number:	145710
Services Ordered:	Data Transmission and/or Internet Access
Service Provider Name:	CenturyLink Qwest Corporation
SPIN:	143005231
Original Funding Commitment:	\$988,615.38
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$440,700.96

Funding Commitment Adjustment Explanation:

During the Selective Review it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. This determination was based on the bid evaluation sheets provided by the applicant, which failed to include price as a factor. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.